IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 113 OF 2005

IN

NOTICE OF MOTION NO. 276 OF 2005

IN

L.C. SUIT NO.370 OF 2005

Suresh Namdeo Sonawane ... Appellant/
(Org. Plaintiff)

V/s

The Municipal Corporation of
Greater Bombay ... Respondents/
(Org.Defendants)

Shri P.M.Havnur for appellant

Mr.J.Xavier with Ms. Jogalekar for respondents

Coram: A.S. Oka,J.

Date : 8th February,2005

**JUDGMENT**

1. Admit. The Respondent waive service.Taken up for hearing forthwith.

2. The original plaintiff has taken exception to the order dated 24th January, 2005 passed by the learned trial judge by which a prayer for ad-interim injunction made by the Appellant is rejected. The challenge in the suit filed by the Appellant is to the notice under section 314 of Bombay Municipal Corporation Act 1888. It is the case of

the Appellant that a notice was served on appellant on 18th January,2005 and it was replied by a letter dated 19th January 2005 and no order has been passed by the concerned officer of the Corporation though reply was filed. The learned counsel for the Appellant has relied upon a Judgment of a learned Single Judge of this court dated 12th October,2001 in Appeal from Order No.681 of 2001 and other connected matters. The learned Single Judge of this court after considering various Judgments of the Apex Court held that in case a reply is filed to notice under section 314 of the said Act 1888, the concerned authority of the Corporation will have to consider the reply and pass an order.

3. The learned counsel appearing for Respondent Corporation stated that in view of law laid down by this court referred to above, the Assistant Commissioner, G/North Ward will consider the reply filed by the Appellant and will pass an order within a period of one week from today.

4. At this stage, the learned counsel appearing for the Appellant states that the Appellant wants to file certain documents which were not available on the date of filing reply and said documents will be filed within a period of one week from today. In view of this position, this appeal can be disposed of by passing following order.

**ORDER**

1.The Assistant Commissioner, G/North Ward of the Respondent Corporation will permit the Appellants to file

additional documents within a period of one week from today and after considering the reply filed by the Appellant and the documents filed by appellant will pass an order on notice dated 14.1.2005 within a period of five weeks from today.

2. In case the order passed is adverse to the Appellant, the same shall not be implemented for a period of one week from the date of communication of said order to appellant.

3. All questions on merit are kept open. This appeal and the suit stands disposed of in above terms.

4. The learned trial judge will pass an order disposing of the suit in terms of this order on production of an authenticated copy of this order.

5. Parties to act on an authenticated copy of this order.

( A.S. Oka,J.)